

REMARKS

In an Office Action mailed September 5, 2002, the Examiner maintained and made final a requirement for restriction and withdrew Claims 1-4 and 14-18 from further consideration as being drawn to a non-elected invention. The Examiner also rejected Claims 10-13 under 35 U.S.C. § 112, second paragraph for alleged indefiniteness. Claims 5-7, 9-13 and 19-21 were rejected under 35 U.S.C. § 102(a) as being anticipated by sequence accession number AAD5303 in WO200134626-A1 and by accession number BC012074. Claims 5-13 and 19-21 were rejected under 35 U.S.C. § 102(a) as being anticipated by Bradley et al. (2001). Claims 5-10 were rejected under 35 U.S.C. § 102(a) or (b) as being anticipated by St. Croix et al. (2000).

A Petition for an Extension of Time for one month accompanies this Response so the Response will be deemed to have been timely filed. No additional extension of time or fee is believed due, however, should an additional extension or fee be due, please consider this to be a request for the appropriate extension of time and a request to charge the fee due to Deposit Account Number 17-0055.

Likewise, no other fee is believed due, but should such a fee be due, please consider this to be a request to charge the fee to the same deposit account.

Each ground for rejection is considered below. Reconsideration is respectfully requested.

Requirement for Restriction:

The Examiner maintained and made final a requirement for restriction. The claims of Group 1 (Claims 1-4 and 14-18) are cancelled without prejudice.

Rejections Under § 112, second paragraph:

The Examiner rejected Claims 10-13 for alleged indefiniteness with regard to the recitation of "a portion." Claim 10 is cancelled and the rejection as applied to that claim is moot. Amended Claims 11-13 no longer recite the phrase.

Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. § 102:

Certain claims were rejected under Section 102(a) as being anticipated by either accession number AAD5303 or by accession number BC012074. Neither sequence anticipates the claims as amended. Amended Claim 5 recites that the claimed polynucleotide encodes a soluble

polypeptide selected for a group of sequences, the encoded polypeptide specifically excluding those of SEQ ID NOs 6, 8 and 10.

Accession number AAD5303 does not disclose a sequence capable of encoding a soluble polypeptide as the sequence includes the transmembrane domain identified by the applicants. Accession number BC012074 is specifically excluded from the claim as the polypeptide encoded by the polynucleotide cannot include SEQ ID NO:8.

Claims 5-13 and 19-21 were rejected under § 102(a) as being anticipated by Bradley et al. (2001). Bradley et al. is not available as prior art against the application. On its face, the paper indicates that it was published online on October 23, 2001, whereas the application was filed on October 3, 2001. In any event, the research described by Bradley et al. is that embodied in the pending patent application. Should the require a so-called In re Katz declaration, the applicants stand ready to provide such a declaration.

Claims 5-10 were rejected under 35 U.S.C. § 102(a) or (b) as being anticipated by St. Croix et al. (2000), specifically with regard to accession number AF279145. As in the case of accession number AAD5303, accession number AF279145 cannot anticipate the claims because it does not encode a soluble polypeptide as it, too, includes the aforementioned transmembrane domain.

Reconsideration is respectfully requested.

Respectfully submitted,



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VERSION WITH MARKINGS TO CHANGES MADE

5. (Amended) An isolated polynucleotide or complement thereof, the polynucleotide encoding a soluble polypeptide selected from the group consisting of [SEQ ID NO:2,] a PA-binding fragment of SEQ ID NO:2, a PA-binding fragment of SEQ ID NO:6, a PA-binding fragment of SEQ ID NO:8, a PA-binding fragment of SEQ ID NO:10, [a PA-binding polypeptide at least 80% identical to any of the foregoing fragments,] and a fusion protein comprising any of the foregoing, the polynucleotide being unable to encode a polypeptide selected from the group consisting of SEQ ID NO:6, SEQ ID NO:8 [or] and SEQ ID NO:10.

19. (Amended) A method for producing an anthrax toxin receptor, the method including the step of:

transcribing a polynucleotide that encodes [an] a soluble anthrax toxin receptor operably linked to an upstream expression control sequence, the receptor being selected from the group consisting of [SEQ ID NO:2, SEQ ID NO:6, SEQ ID NO:8, SEQ ID NO:10,] a PA-binding fragment of SEQ ID NO:2, a PA-binding fragment of SEQ ID NO:6, a PA-binding fragment of SEQ ID NO:8, a PA-binding fragment of SEQ ID NO:10, [a PA-binding polypeptide at least 80% identical to any of the foregoing], and a fusion protein comprising any of the foregoing, to produce an mRNA; and

translating the mRNA to produce the anthrax toxin receptor.